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IN THE

Supreme Court of the United States

October Term, 1966

No. 216

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JAN 27 1967

NATIONAL LABOR RELATIONS BOARD, ^{CLERK OF THE CLERK}
^{SUPREME COURT, U.S.}
Petitioner,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY and INTERNA-
TIONAL UNION, UAW-AFL-CIO (Locals 248 and 401).

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

BRIEF FOR THE NEW YORK TIMES DISPLAY ADVERTISING SALESMEN STEERING COMMITTEE, AMICUS CURIAE

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Dated: January 26, 1967

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**BRIEF FOR THE NEW YORK TIMES DISPLAY
ADVERTISING SALESMEN STEERING
COMMITTEE, AMICUS CURIAE**

This brief, *amicus curiae*, is filed on behalf of The New York Times Display Advertising Salesmen Steering Committee in support of the decision of the court below.

The Intervenor

The New York Times Display Advertising Salesmen Steering Committee is an unincorporated association of some 43 employees of The New York Times. The Committee is wholly independent of any labor organization or any company or management group; the expenses of the Com-

mittee are paid by contributions of the individual members. The Committee was formally organized in January, 1966, as a consequence of the extension of a labor contract's union shop provisions to certain members of the group. Prior to the most recent collective bargaining agreement, some but not all of The Times' advertising salesmen were subject to compulsory union membership; to all intents and purposes, the exceptions to compulsory unionism were removed by The Times and the Newspaper Guild in the contract effective March 31, 1965. Since its organization, the Committee has acted on behalf of its members in a number of ways, including the filing of a deauthorization petition with the National Labor Relations Board and the provision of advice and legal counsel to the individual members as to the limits of their compulsory obligations to the Newspaper Guild.

The Newspaper Guild has brought to trial, under its internal union procedures, some 23 members of the Committee for the "anti-union offense" of having crossed a Newspaper Guild picket line in 1965. In a decision of the Newspaper Guild Trial Board dated January 9, 1967, the individual employees were found guilty of offenses against the Union and fined an amount equal to that earned during the strike, up to four weeks' pay; this could range as high as \$1,500.00.

POINT I

Employees' statutory rights must prevail over contractual compulsion.

Amid the welter of secondary material that has been offered to this Court, we might pause to recall the wry comment of Justice Holmes, who wrote:

"Only a day or two ago, when counsel talked of the intention of the legislature, I was indiscreet enough to say I don't care what their intention was. I only want to know what the words mean."*

Thus, this case is one requiring the application of a statute. That statute, the National Labor Relations Act, as amended, states in its declaration of policy, Section 1(b), in pertinent part, that:

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, *to prescribe the legitimate rights of both employees and employers in their relations affecting commerce*; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, *to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce*, to define and proscribe practices on the part of labor and management which affect commerce

* Quoted by Frankfurter, J., "Some Reflections on the Reading of Statutes", Record of The Association of the Bar of the City of New York, 1947, vol. 2, 228. Frankfurter, J., adds:

"Legislation has an aim * * *. That aim, that policy, is not drawn, like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate, and he ought not to be led off the trail by tests that have overtones of subjective design."

and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." [Emphasis added.]

It is important to understand that the rights that are to be protected by the Act are those of the individual employees. At its outset, the Act makes clear that labor organizations are only intended to be a vehicle for the vindication of these individual employee rights; such organizations are not intended to acquire either position or privilege at the expense of or in substitution for the rights of the employees they are chartered to protect.

This basic purpose and policy of the Act is implemented in Section 7, which provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and *shall also have the right to refrain from any or all of such activities* except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)." [Emphasis added.]

Nothing can be more clear from the language of the statute than that the employee's individual right to refrain from concerted action is unfettered and unrestrained—as it would be without governmental intervention—except to the extent of the obligations authorized by Section 8(a)(3) of the Act.

Without quoting Section 8(a)(3) *in extenso*, we believe it is accurate to summarize that provision and the decisions interpreting it as permitting a union and a company to enter an agreement requiring an individual's union membership to the extent that an individual may be required to pay "periodic dues and the initiation fees uniformly required".

The very form which this exception takes gives rise to some relevant observations. First, it should be noted that the source of obligation upon the individual employee authorized by Section 8(a)(3) is a *contract* to which he is not a party. It obscures the issue to argue that in signing a union security clause the union acts as the employee's agent or representative. Although this may be true, within the meaning of the Act, when the union is bargaining with the employer for the individual's advantage, it certainly cannot be true or in any way prejudice the individual when the company and the union are bargaining away a right which the individual would otherwise have against the union itself. We do not think anyone would seriously suggest that under these circumstances the employer is representing the individual. The long and short of it is that there are two independent parties, motivated by their own self-interest, bargaining over the rights of the individual, who is not seated at the bargaining table. A restriction on the individual's general right under a clause arising out of such an agreement must certainly be carefully scrutinized and closely circumscribed. Moreover, the form of the statute itself plainly indicates that contracts and restrictions agreed upon pursuant to 8(a)(3) constitute an exception to the general right, and it is "the ele-

mentary rule * * * that exceptions from a general policy which a law embodies should be strictly construed; that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the enactment." *Spokane & Inland Empire R. R. Co. v. U. S.*, 241 U. S. 344, 350 (1916); *Interstate Natural Gas Co. v. F. P. C.*, 156 F.2d 949 (5th Cir. 1946), *aff'd* 331 U. S. 682 (1947).

The Federal agencies responsible for the administration of the recently enacted civil rights laws have been quick to recognize that collective bargaining agreements cannot restrict rights guaranteed to employees by statute, no matter how important a particular contractual provision may seem to the union claiming its application. See administrative authorities cited in CCH, Employment Practices Guide ¶¶1725.034, 1725.042, 1725.043. The statutory freedom from being forced to join in concerted activities would seem to stand in equal dignity with a statutory freedom of opportunity.

If we can then agree that the statute means what it says and individuals have a right to refrain from "any or all" concerted activities under Section 7 of the Act, it remains for the Court to decide only whether a union violates Section 8(b)(1) of the Act and restrains an employee in the exercise of his rights under Section 7 when it imposes a fine upon that employee for refraining from participating in the union's strike, picketing or any other form of concerted activity.

To argue that a monetary fine is not "restraint" or "coercion" is scholasticism of the worst sort. Indeed, the National Labor Relations Board has only recently used its

earlier findings that fines constitute a form of coercion within the meaning of Section 8(b)(1) to conclude that expulsion from a union, as a penalty, is a form of such coercion. *Cannery Workers Union of the Pacific (Van Camp Seafood Co., Inc.)*, 159 N. L. R. B. No. 47 (1966); *Brotherhood of Painters, Decorators and Hangers of America Local Union No. 585*, 159 N. L. R. B. No. 98 (1966).

The Solicitor General admits that the union would have violated the Act if it had threatened the individual employees "with a loss in employment benefits (after the strike ended)" (Brief, p. 30) and goes on to argue that "no rational purpose would be served by permitting expulsion but prohibiting fines" (Brief, p. 31). These two positions it seems to us, indicate a confusion as to the meaning of the terms "coercion" or "restraint" and the interests which are to be protected under the Act.

Apparently the Solicitor agrees that a threatened loss of employment benefits is a restraint on an individual's action. Certainly the restraint would not arise out of the employee's frustrated desire to save Alms-Chalmers inconvenience. The restraint is the direct result of the employee's anticipated economic loss—in other words, dollars out of his pocket. Assuming that a man's salary is \$100 per week, he suffers the same loss when that \$100 is taken out of his pocket through a fine as when it never gets into his pocket because he is deprived of a week's work. The Solicitor's position would certainly not be altered if the threat against the employee was only that he would lose a single holiday day's pay; similarly, the Solicitor's argument cannot be advanced by any

contention that the fines involved in this case are relatively small. The principle is, of course, the same, and the restraint is there. Furthermore, the precedent established in this case would be equally applicable to situations such as those obtaining in *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 N. L. R. B. 674, enforced *sub nom.*, *Roberts v. National Labor Relations Board*, 350 F.2d 427 (C. A. D. C.); and *Minneapolis Star and Tribune Co.*, 109 N. L. R. B. 727, 738, where the fines were \$450 and \$500, respectively, and in cases arising under the American Newspaper Guild Constitution which allows the Trial Board to fix fines of indeterminate amount. As we have noted, members of the Intervenor's group have been fined as much as \$1,500.00, and the fines have been made a direct equivalent of four week's work.

Contrary to the Solicitor's contention (Brief, p. 31), there *would* be a "rational" purpose in permitting expulsion as a union penalty but prohibiting fines. The economic losses that an individual would suffer as a result of expulsion consist of the loss of benefits which arise as a consequence of his union membership; it might, therefore, be both rational and equitable to deprive an individual of such a set of benefits where he is unwilling to undertake the full range of obligations established by the union. On the other hand, the penalty of a fine is in no way related to the deprivation of a benefit conferred on union members as a consequence of their union membership. A fine simply takes money out of a man's pocket, money that he has earned or must earn in his *employment* relationship. Where the union exercises a power to fine, it reaches beyond the scope

of its inherent powers and vests itself with the power of both the employer and the judicial processes to restrict a man's action. In the proceedings affecting the Intervenor, their representative has stated that the individuals involved are willing to suffer any penalty the union may mete out except fines or other economic impositions related to their employment; in short, they would not contest an expulsion from the union. Certainly the Solicitor General may be right in suggesting that some economic loss may arise from expulsion. There may, for instance, be the loss of strike benefits or participation in union-administered, voluntary benefit programs. If the loss is as substantial as the Solicitor claims, it would seem he could not effectively argue that the deprivation of the fine as a union penalty would strip the union of effective means for maintaining discipline within its own house. The crucial difference would seem to be that expulsion is a fair and effective weapon against those who have chosen to stay in that house, whereas fines reach out to punish those who would assert their right to refrain from any but the most minimal union obligation and who have only been brought within the union's reach by a contract with the employer pursuant to the limited and restrictive provisions of Section 8(a)(3). The court, in *Leeds & Northrup Co. v. N.L.R.B.*, 357 F.2d 527, 536 (3rd Cir., 1966), understood this precise point when it ruled:

"In some instances, as where only the status of the employee as a member of the union is affected, union fines standing alone may not violate the Act. But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only union membership status but also the relationship between the employee and his em-

ployer in violation of the Act. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife. Congress has imposed strict limitation on compulsory unionism, and the Supreme Court has determined the obligation of union membership to be confined solely to the payment of dues. *Radio Officers' Union, etc. v. N.L.R.B.*, 347 U. S. 17, 74 S. Ct. 323, 98 L.Ed. 455 (1954); *N.L.R.B. v. General Motors*, 373 U. S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963); *Union Starch & Refining Co. v. N.L.R.B.*, 186 F.2d 1008, 27 A.L.R.2d 629 (7th Cir. 1951), cert. den. 342 U. S. 815, 72 S.Ct. 30, 96 L.Ed. 617 (1951); *Int'l U. of Elec., Radio & Machine Workers AFL-CIO, Frigidaire Local 801 v. N.L.R.B.*, 113 U. S. App. D. C. 342, 307 F.2d 679 (1962)." [Footnote omitted.]

A final observation as to the coercive nature of fines need take us no further than the criminal courts, where the sentence may range from the J.P.'s "30 days or \$30" to the imposition of fines running into the scores of thousands for antitrust violations. Of course, the plain purpose of such sentences and the laws underlying them is to punish and coerce. Here, the criminal law plainly recognizes that a man's free time is also his earning time and may be given a money equivalent. Again, we must observe that there is no lessened coercion where an individual is allowed to work for 30 days and his earnings are then taken away from him than there is where he is prevented from going to work for 30 days in the first place; if anything, the fine is worse and more coercive. The Solicitor attempts to distinguish certain cases decided by the Board (Brief, p. 15-16) characterizing fines as coercive by arguing that such fines were imposed for an illegitimate purpose. However, the purpose

for which the fines are imposed cannot alter the coercive character of the penalty itself. Such purpose only informs us as to whether the coercion is legitimate. As we have seen, coercion here being considered is intended to be a restraint upon a right guaranteed to the employees under the Act. Nothing can alter the fines' coercive nature; nothing in the Act can justify its purpose.

POINT II

Employees' compulsory union membership is not a contractual commitment.

Much of the Solicitor's attempt to narrow the scope of individual employees' rights under Section 7 is based upon the proviso to Section 8(b)(1) which states "that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein". In the first place—and this should really be sufficient—the penalty to which objection is being made is not one which affects the acquisition or retention of the individual's union membership. Just the contrary, as we have pointed out, there is a substantial difference between a union action affecting an individual's status within that organization and its action which reaches out and affects the employee's employment relationship to a third party; in fact, the Intervenor's have made it plain in their own proceeding that they have no objection, or even interest, in any action that the union may take with respect to their membership so long as such action does not affect their job rights.

It is undoubtedly true that the Congress was reluctant to permit the operation of its Taft-Hartley amendments to interfere with traditional internal union operations which were not in conflict with the basic purposes and policy of the Act. The basis for such a legislative attitude can be found in the comments of W. Friedmann in his work on "*Law In A Changing Society*" 260 (Pelican Ed. 1964):

"The ideological motive is respect for freedom of association, and a long-standing disinclination of the courts to interfere in domestic quarrels. An American commentator has summarized this attitude as follows:

'This reluctance is a product of long judicial experience in attempting to settle family fights in religious and fraternal associations. The courts have recognized that they have no workable standards for refereeing disputes based on obscure doctrines within a church, or for judging the virtues of cliquish factions within a lodge * * *'

"By default rather than by detention the theory was applied to the emergent labour unions."

However, as Friedmann goes on to point out, the legal approach to associations, including labor unions, and the regulation of their control over their members must change as the status of membership ceases to be a voluntary one and becomes, instead, a coerced or economically necessary one. Under such circumstances, the immunity of voluntariness can no longer be invoked, and the control of the association over its members becomes one of public concern.*

* "The term 'voluntary' is frequently used in connection with the term 'association' or 'society,' and some principles of law are confined, in their operation, to 'voluntary' organizations. In this connection, the term means simply that the organization is one in which one may seek, or be accepted into, membership in the organization as a matter

Where a union's membership is truly voluntary, it is appropriate to invoke the shibboleths of union "loyalty" and "discipline" used by the Solicitor. Such a union member's obligations under a constitution and by-laws may truly be voluntary contractual ones to which he may be held as part of the bargain he has made with other union members. There are strong unions in this country and there are entire trade union movements in other Western countries* whose membership is composed of just such voluntary adherents.

In the instant case, however, the union has chosen not to rely upon the inherent attractions of its policies or organization to enlist voluntary members. Instead, the union has entered a contract with another party, the company, by which it is agreed that individual employees shall be forced to join the union on pain of losing their jobs. This right to compel membership is certainly inconsistent with and must be considered to be at the expense of any union claim that its membership is a compact of individuals freely associated with one another. If, in acquiring its right to compel membership under the statute, the union must surrender some portion of its power to discipline individuals who do not follow its internal policies, the union must certainly be considered to have made the better of the bargain—and, in all events, its own bargain.

of choice. If membership is required by legislative mandate, such as in the case of public officers or employees, or if membership in a professional society is necessary, in a substantial sense, for the practice of one's profession in the particular locality, such an organization is not a 'voluntary' organization." [Footnotes omitted.] 6 Am. Jur. 2d 430.

* See Friedmann, *supra*, p. 256, *et seq.*

The Solicitor suggests that the individuals involved in this case only had an obligation to pay dues and that they "voluntarily" assumed the other obligations of union membership. We assume the Solicitor concedes that if some yet undefined but appropriate declaration had been made, the individual employees could have freed themselves from all but the monetary obligations of union membership. The kindest characterization of this theoretical approach would be to call it disingenuous. All one need do is consider the realities of a typical industrial relations situation at the plant site. In a new representational situation, the union has won an election or been recognized as the exclusive bargaining representative. All concerned are either convinced or informed that the union is the individual's representative. The employees are further informed that they must join the union within thirty days or lose their jobs and that the employer will enforce this obligation. Our typical employee earning \$100 a week does not then retain a labor relations attorney or even a family counselor to advise him as to the scope of his union membership obligations. Indeed, there should be very little question in his mind about what he has to do; he simply has to join the union. In due course, he receives his membership application form—not several, among which he may choose—one form. He signs that application form and sends it in with his initiation fee to the union. The Solicitor General argues that this individual has now made a deliberate and voluntary decision to accept and abide by the terms of the union's constitution and by-laws, which may run several hundred pages and include strictures by the Local, the International, and even the Federation. In most instances, and in the situation involving the Intervenors, the Union Constitution and

By-Laws are not delivered to the individual until well after he has signed his membership application. As a practical matter, the involuntariness of the membership obligation is even plainer when an employee enters an already established bargaining unit and his signature to membership cards and applications is simply a matter of unexamined, community routine.

We would emphasize the fact that there is no agency—not the National Labor Relations Board, nor the Department of Justice, nor the Department of Labor—public or private, which stands ready to advise the individual as to how he may reserve any of his rights where he has been forced to join a union pursuant to a collective bargaining agreement. If unions wish to penalize “disloyalty” and still enjoy the forced draft of union shop provisions, then it is they that should have the obligation of informing prospective members of the full scope of the individual’s rights and all of his options. Otherwise, the totality of such “membership agreements” can no more stand strict enforcement than can any other contract in which one party has misled the other by failure of full disclosure.

This Court, in decisions by its most distinguished jurists has made it plain that an individual will not be found to have waived a Federal right where the so-called “agreement” is the product of economic duress, *Union Pac. R. Co. v. Public Service Commission of Missouri*, 248 U. S. 67 (1918); *Atchison, Topeka & Santa Fe Ry. Co. v. O’Connor*, 223 U. S. 280 (1912); nor will ordinary contracts be enforced when they can be traced to the exercise of unfair advantage, *Lonergan v. Buford*, 148 U. S. 581 (1893). The general description of unenforceable, “involuntary” agree-

ments in American Jurisprudence is almost a perfect exposition of the circumstances now before the Court.*

The Norris-LaGuardia Act, 29 U. S. C. §103, eliminated one form of contract which an individual employee might enter when it proscribed the yellow dog contract. The theory for this legislation, which has now become a key factor in our national labor policy, rested in the necessity of preserving the disadvantaged individual from the inequalities of an unfair bargaining situation with management. Senator Wagner described circumstances under which the "yellow dog" contract was usually executed, 75 Cong. Rec., Pt. 5, p. 4916, 72d Cong. 1st Sess:

"Weigh the significance of these facts: To the employee out of work the job means everything—rent, food and clothing for his wife and children. To the large business organization no worker is indispensable; there is always another to take his place. There is no opportunity for bargaining, there is no possibility of bargaining between parties whose powers are so violently unequal. The employee must either accept the terms of employment as they are tendered or go hungry.

* "Undue influence may prevent the formation of a binding contract. What constitutes undue influence is a question depending upon the circumstances of each particular case. * * * Whenever the relationships between the parties appear to be of such a character as to render it certain that they do not deal on terms of equality, but that unfair advantage in a transaction is rendered probable either because of superior knowledge of the matter derived from a fiduciary relationship or from overmastering influence on the one side, or from weakness, dependence, or trust justifiably reposed on the other side, the presumption is that the transaction is invalid, and it is incumbent on the stronger party to show affirmatively that no deception was practiced or undue influence used and that every thing was fair, open, voluntary, and well understood." 17 Am. Jur. 2d 505.

"When we consider the personal implications of the anti-union promise, that the employee undertakes to keep himself defenseless against oppression, powerless to bargain, powerless to withhold his services, without means to improve his condition or to reduce somewhat the frightful insecurity in which he lives, we come to the further conclusion that this promise is what the law calls harsh and unfair and what conscience denounces as wicked and infamous. Such an unholy transaction is not entitled to the protection of equity. (Kimberly v. Jennings, 6 Simons, 340.)"

Similarly, the Labor-Management Relations Act in Sections 7 and 8(b)(1) must be taken to protect the disadvantaged individual from the inequalities of an unfair bargaining situation with a union in which he cannot know, much less contend with, the obligations being forced upon him.

POINT III

The decision of the Court of Appeals will not affect the stability of industrial relations.

The National Labor Relations Act, as amended, and the decisions of this Court establish one cardinal point which is not in issue in this case; that is, that the duly designated union, as a matter of legislative enactment, is the exclusive bargaining representative for the employees in the bargaining unit. Congress has decreed that it is only the union, to the virtual exclusion of the employee, which may contractually establish terms and conditions of employment; this is a right which the employee must surrender. The obligations set forth in the collective bargaining agreement become binding on the individual, as well as upon the union. Both the employee's rights—his compensation, his benefits, and the like—and his obligations—the hours he

must work, the discipline he must abide—are established by the contract made for him by the union. The scope and fulfillment of his obligations to his employer are determined by union action. Therefore, the Solicitor raises a false issue when he contends that the decision of the court below would lead to uncontrollable wildcat strikes. First of all, such a strike would be a breach of the individual's obligations under the labor agreement with his employer and could be punished appropriately by management. Second, we suggest that a wildcat strike in defiance of union negotiated contract terms is a violation of the employee's statutory obligation to vest exclusive bargaining authority in the union. As such, it might be held that such type of statutory misconduct by the individual would be subject to appropriate disciplinary action. In contrast to the wildcat strike, the employee's decision not to picket does not interfere with the continuity of the bargaining relationship or prevent the negotiation of a single agreement by the individuals' exclusive bargaining representative. The stability of labor relations achieved through collective bargaining will in no way be damaged and may well be enhanced by the full protection of those rights reserved and guaranteed to the employee by Section 7 of the Act.

Conclusion

The Court is here faced with a question of statutory construction. An attempt has been made to muddy the judicial waters by contending that a single penalty is coercive when it is used for one purpose but is innocent when it is used for another purpose. In short, problems of interpretation have been created where by the language of the statute itself none exists.

Against the weight and purport of the statute's language, which is wholly consistent with rational purposes, the Solicitor has offered a potpourri of legislative comments and, more often, reflections on the omission of such comments. However, we do not believe that the statute is so obscure that the Court must weigh one remark by Senator Taft supporting the conclusion of the Court below (Brief, p. 27) against another remark by Senator Ball (Brief, p. 23); nor should the language of the statute be obscured by lengthy quotations from the legislative materials which deal with the most atrocious forms of coercion but omit, for reasons best known to the orators or for no reason at all, any reference to fines.

Charles P. Curtis writes in "A Better Theory of Legal Interpretation", *Jurisprudence in Action*, 143 (Ass'n of the Bar of the City of N. Y., Baker Voorhis 1953):

"The doctrine [of using secondary materials] has had a natural, but surely an unintended, consequence on legislation. It gives anyone who drafts an act, committee members and its counsel, the administrative agency involved, even lobbyists, a right, anyhow the opportunity, to plant expressions of intention for the very purpose of having the courts nose them out and use them. Archibald Cox says in an article on The Labor Management Relations Act in the *Harvard Law Review* for November, 1947, 'It is becoming increasingly common to manufacture "legislative history" during the course of legislation. The accusations of outside participation made in Congress, and the elaborate interpretations in some passages in the committee reports, suggest the danger that this occurred during consideration of the Taft-Hartley amendments.'

“* * * Let [the courts] stop peering over the shoulders of legislative committees and sitting in the strangers' gallery. The Congressional Record is not the United States Code.”

A reversal of the Court of Appeals can only occur if this Court finds that the contractual rights of the Union *against* the individual arising from the union-management agreement are superior to the individual's right of freedom from restraint set out in the statute itself.

The enactment before the Court is, on its face, plain in its purpose to preserve the individual's freedom to either join or refrain from concerted activity. It deliberately limits coercion or restraint upon the individual to those situations in which collective action is necessary to prevent bargaining chaos; it prohibits restraint or coercion to force an individual to join in concerted activity where the purpose merely is to enhance the economic power of one of the bargaining parties.*

* In a discussion of the case now before the Court, the Harvard Law Review Comments, 80 Harv. L. Rev. 683, 687 (1967):

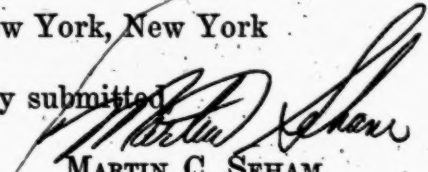
“Balancing the interests involved, it is likely that whereas genuine pro-strike morale among the bulk of the membership is a factor crucial to the union's ability to call a successful strike, the union has not argued and shown a serious need to substitute for that morale the power to coerce recalcitrants; absent clear need the NLRA's bias against coercion and in favor of persuasion as the technique of union cohesion seems dispositive. Against the union's interest in an artificial solidarity must be weighed the member's section 7 interest in freedom from restraint. If denied the power to fine the non-striking member, the union retains both its proviso-secured expulsion sanction and the potent devices of informal ostracism.”

We recommend for the Court's consideration the entire commentary cited as a disinterested review of many of the issues involved in this case.

In this case, the Union demands that its members march. It is not a march of the Ancient Order of Hibernians; it is a picket line march designed to coerce and exert economic force. The St. Patrick's Day Parade is a voluntary display by members voluntarily joined and mutually obligated. We suggest that the rights among themselves of such marchers are far different than those which a union may properly wield against compulsory members. We respectfully urge the Court to reflect upon the inconsistency with our democratic patterns of sanctioning a rule of law which would force American workers first to join an organization and then to march in its most militant formations on pain of the harshest economic penalty.

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Respectfully submitted



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